

FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

SECOND APPEAL No.44 of 2006.

Office Notes, office Memoranda of Coram appearances, Court's orders or directions and Registrar's order.	Court's or Judge's order
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CORAM: C.L.PANGARKAR,J.
DATE : 19th December, 2006.

1. Heard Mr.Abhijit Deshpande, the learned counsel for the appellant.

2. The plaintiff had instituted a suit for declaration and possession in respect of the suit house. The trial court dismissed the suit. The appeal preferred before the Additional District Judge also came to be dismissed. There are, therefore, concurrent findings of facts.

3. The learned counsel for the appellant contended that gift-deed, upon which the plaintiff had based the suit, should have been accepted by the trial court and the first appellate court in evidence in view of the fact that it was a 30 years' old document. There is no doubt that document is 30 years' old. The presumption could have been drawn in respect of that document had the document been registered. Because

gift is a transfer of property it is compulsorily registrable. The said gift-deed not having been registered was rightly not accepted by the courts below in the evidence.

4. The next contention that was raised by Mr.Deshpande was that the question as to whether there was oral partition or not was already decided in earlier suit and the trial court had rightly held that it could not, therefore, interfere with that particular finding in that suit. The submission has no force because such an issue was not at all raised either by the plaintiff or defendant specifically. The question of res-judicata is question of procedure and same having not been properly raised, the issue could not be raised and therefore, there is nothing to suggest that parties were made aware of the fact that they will have to meet such kind of case. I do not see any perversity in the either of the judgments. Since there is concurrent finding of facts and no substantial question of law is involved, the appeal is dismissed in limine.

JUDGE

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